

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANTS: MR GARRY JOHNSON

APPLICATION NO: DMS03234/2026

PANEL: MR PHILLIP GLEESON
(PRESIDING MEMBER)

DATE OF HEARING: 9 March 2026

DATE OF DETERMINATION: 27 May 2026

IN THE MATTER OF an appeal by GARRY JOHNSON against a determination made by the Racing and Wagering Western Australia Stewards of Harness Racing (Stewards) on 17 February 2026 to impose a 28 day suspension for breach of Rule HR 149(2) of the Rules of Harness Racing (Rules)

Mr Johnson appeared in person supported by Mr Burnett.

Mr Harrod and Mr Lewis appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

Background

1. Mr Garry Johnson is a harness racing driver.
2. The Stewards conducted an inquiry into the driving tactics adopted by Mr Johnson when driving DAWSON SHARD NZ in Race 1 at Gloucester Park on 16 December 2025. The inquiry concluded on 17 February 2026. The Stewards found Mr Johnson in breach of Rule 149(2) of the Rules of Harness Racing.
3. The Rule in question reads:
“A person shall not drive in a manner which in the opinion of the Stewards is unacceptable”.
4. A penalty of 28 days disqualification was imposed.
5. By notice of appeal dated 22 February 2026, Mr Johnson appeals against both conviction and penalty. The period of disqualification commenced on 3 March 2026.

ORDER AND DETERMINATION OF APPEAL

6. On 6 March 2026 I made the following order:

Pursuant to section 17(7) of the Racing Penalties (Appeals) Act 1990 the Tribunal directs that the RWWA Stewards' order to suspend Mr Johnson's reinspersons license for a period of 28 days be stayed pending the outcome of Mr Johnson's appeal

7. Mr Johnson's appeal was heard before me on 9 March 2026. In addition to the submissions made to me at the hearing by each party, I have had the benefit of the following:
- a. Written submissions filed with the Tribunal by Mr Johnson, and
 - b. The transcript of the inquiry held at Gloucester Park on 16 December 2025 and 17 February 2026, and
 - c. Digital video of Race 1 at Gloucester Park on 16 December 2025.
8. Rule 149(2) of the Rules of Harness Racing grants in the Stewards a discretion to determine what, in their opinion, is unacceptable driving. The rule is framed in the subjective and hence what matters is the opinion of the Stewards.
9. It is self-evident that at the conclusion of their inquiry the Stewards did reach the opinion that Mr Johnson drove DAWSON SHARD NZ in an unacceptable manner.
10. Nonetheless, every statutory discretion, however broad, is constrained by law.¹
11. In this context, the rules should be construed as to imply that the Stewards will display reasonableness in the method by which they reach their opinion. Matters such as impartiality and rationality as to process and reasoning ought to be observed by the decision makers.
12. In this vein, it has been observed by this Tribunal previously [see Johnson (Appeal 875) and in Hall (Appeal 878)] that there should be no interference with the opinion reached by the Stewards unless it is 'clearly unjust', 'arbitrary', 'capricious', or 'unreasonable' in the sense that no Stewards acting reasonably could have formed that opinion
13. The Tribunal's role then is to review the Stewards' decision with an eye for whether the Stewards have been, for example, capricious. Have they placed undue weight on certain facts or matters and thereby inappropriately disregarded others? Have they given all matters raised by Mr Johnson at the inquiry real and genuine consideration when they reached their opinion?
14. In his written submissions, Mr Johnson intelligently captured the issues, namely:
- a. DAWSON SHARD NZ had an established tendency to over race, which was acknowledged by Mr Johnson and supported by the horse's form history.
 - b. The horse was racing with new gear, including a bit that had not previously been used in race conditions.

¹ *Minister for Immigration and Citizenship v Li* [2013] HCA 18 at [23]

- c. The lead was not obtained through an aggressive speed battle, but by virtue of circumstance. The horse appeared to be racing keenly under its own momentum.
 - d. The central issue identified by the Stewards was whether sufficient effort was made by Mr Johnson to restrain the horse once the lead had been obtained.
- 15. The Stewards at the inquiry concluded that Mr Johnson failed to ease the pace for the majority of the front straight in circumstances where the gelding was inclined to over race.
 - 16. During the appeal hearing before me, I heard Mr Johnson submit that he felt comfortable with his drive and had hoped that DAWSON SHARD NZ would settle. He had also been reluctant to pull hard because the horse was using new gear and his reaction to that gear was untested.
 - 17. I have reviewed the video carefully and the transcript of the hearing and have concluded that the finding of the Stewards that Mr Johnson failed to take adequate measures to settle his drive, in the context of the horse's known race style and its lead time was not an unreasonable conclusion to draw in all the circumstances.
 - 18. Mr Johnson invited me to consider certain matters external to DAWSON SHARD NZ and the particulars of Race 1 at Gloucester Park on 16 December 2025. Namely:
 - a. The behaviour of other horses with fast lead times in WA races, and
 - b. The absence of penalty in races with similar lead times or tactical miscalculation
 - 19. Such matters might be important if the Tribunal's role was to articulate and impose an objective standard. As I have expressed, that is not this Tribunal's role in an Appeal of an opinion reached under Rule 149(2).

CONCLUSION

- 20. For very good reasons, the decision as to what, in the circumstances of Race 1 at Gloucester Park on 16 December 2025, might constitute unacceptable riding is left to the Stewards. They have industry wide vantage and experience to assess such matters. My role is to evaluate whether the process they adopted to review and consider evidence and reach their opinion appears fair and reasonable. In this case I have concluded that it was.
- 21. I have also concluded that the penalty imposed of a 28 day suspension is not manifestly unfair in the circumstances of Mr Johnson's riding record and the nature of the rule in question.

22. The Tribunal orders:

- a. The order made 6 March 2026 granting a stay of the Appellant's suspension is discharged.
- b. The Appeal is otherwise dismissed.



PHILLIP GLEESON

PRESIDING MEMBER

